

Message

From: Sibley, Shawn S [SSibley@adem.alabama.gov]
Sent: 6/22/2016 9:20:05 PM
To: Dorka, Lilian [Dorka.Lilian@epa.gov]
CC: Johnston, Tom [TLJ@adem.alabama.gov]; Packard, Elise [Packard.Elise@epa.gov]; Rhodes, Julia [Rhodes.Julia@epa.gov]; Biffl, Betsy [Biffl.Betsy@epa.gov]; Lapierre, Kenneth [Lapierre.Kenneth@epa.gov]; HALIM-CHESTNUT, NAIMA [Halim-Chestnut.Naima@epa.gov]; Tommelleo, Nancy [Tommelleo.Nancy@epa.gov]; Martinez, Brittany [Martinez.Brittany@epa.gov]; Covington, Jeryl [Covington.Jeryl@epa.gov]; Lofthouse, Jeremy [Lofthouse.Jeremy@epa.gov]; Stein, Jonathan [Stein.Jonathan@epa.gov]; Bachle, Laura [Bachle.Laura@epa.gov]; Temple, Kurt [Temple.Kurt@epa.gov]; Jones, Azure [AJones@adem.alabama.gov]
Subject: RE: Your Recent E-Mails: Records Request and Request for Dismissal
Attachments: HO Recommendation - AEMC Docket No. 16-01 (06-20-2016).pdf; Memo Style.pdf

Ms. Dorka,

Thank you for your email of June 14, 2016. We also are in receipt of a document request from Jeremy Lofthouse, an Honors Law Clerk on your staff, inquiring as to the status of the administrative appeal of the modification of the Dothan Landfill permit. I will respond to each in this email.

Regarding the administrative appeal of the modification of Dothan's landfill permit, a 3-day hearing was conducted before a duly appointed Hearing Officer of the Alabama Environmental Management Commission (AEMC) on May 31-June 2, 2016. Based upon witness testimony, a question arose whether all adjacent property owners received notice of the proposed permit modification. Following that testimony, the City of Dothan confirmed through its consultant - and reported to ADEM - that all adjacent property owners were not identified in the City's permit application as required by ADEM Admin. Code r. 335-13-5-.02(1)(f), and thus did not receive notice as required by ADEM Admin. Code r. 335-13-5-.03(1)(b)2. In accordance with Alabama case law holding that such a notice defect renders the agency's administrative action "null and void," ADEM notified the City of Dothan that the issuance of the modification to the permit was rescinded and revoked. Thereafter, ADEM filed with the Hearing Officer a "Suggestion of Mootness" urging dismissal of the appeal as moot. On June 20, 2016, the Hearing Officer recommended that the AEMC dismiss the appeal as moot. [Copy attached.]

In light of the above sequence of events, ADEM notified your office and moved to dismiss Complaint No. 13R-16-R4, which is based on the modification of Dothan's landfill permit. Like the appeal before the AEMC, Complaint No. 13R-16-R4 is due to be dismissed as moot. Based on this additional ground, we renew our request to your Office to dismiss Complaint No. 13R-16-R4.

Also, as a point of clarification, the document request submitted by Mr. Lofthouse included the following erroneous statement: "I did find that the petitioner who requested the hearing [before the AEMC] also filed a complaint to the EPA..." To the contrary, the petitioners before the AEMC are not the same individuals who filed Complaint No. 13R-16-R4 with your Office. Although the names of the Title VI complainants were redacted from the copy provided ADEM, the complaint clearly identifies each as African-American. The parties before the AEMC alleging an adverse impact from the modification of Dothan's permit, Mr. Bobby Lewis and Mr. Michael Del Vecchio, each are Caucasian.

With regard to your inquiry as to possible dates within the next couple of weeks to discuss ADEM's responses to your Request for Information and procedures going forward, ADEM General Counsel Tom Johnston and I are available at your convenience and look forward to that conversation. Please confirm your availability and we will schedule a call.

In the meantime, should you have any questions please do not hesitate to contact me.

Best Regards, - Shawn

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From: Dorka, Lilian [<mailto:Dorka.Lilian@epa.gov>]
Sent: Tuesday, June 14, 2016 5:39 PM
To: Sibley, Shawn S <ssibley@adem.alabama.gov>
Cc: Johnston, Tom <TJ@adem.alabama.gov>; Packard, Elise <Packard.Elise@epa.gov>; Rhodes, Julia <Rhodes.Julia@epa.gov>; Biffl, Betsy <Biffl.Betsy@epa.gov>; Lapierre, Kenneth <Lapierre.Kenneth@epa.gov>; HALIM-CHESTNUT, NAIMA <Halim-Chestnut.Naima@epa.gov>; Tommelleo, Nancy <Tommelleo.Nancy@epa.gov>; Martinez, Brittany <Martinez.Brittany@epa.gov>; Covington, Jeryl <Covington.Jeryl@epa.gov>; Stein, Jonathan <Stein.Jonathan@epa.gov>; Bachle, Laura <Bachle.Laura@epa.gov>; Temple, Kurt <Temple.Kurt@epa.gov>
Subject: RE: Your Recent E-Mails: Records Request and Request for Dismissal

Hi Shawn,

Hope you are doing well. I am hoping to address a couple of different things via this one email.

First, with respect to your question bellow regarding how OCR would process a request for case-related documents that are part of case under investigation. I can tell you that OCR would handle all requests for any case-related documents per the Freedom of Information Act (FOIA) (5 U.S.C. §552). In general, when EPA OCR receives a request for case-related records, which we handle under FOIA, all potentially responsive documents are considered on a document by document basis, and OCR must determine an appropriate response on a document by document, case by case basis for each FOIA request. The FOIA statute/regulations provide federal agencies with exemptions (total of 9) from disclosure that federal agencies may apply as appropriate and necessary.

Again, these determinations are made on a document by document, case by case basis consistent with FOIA. For more information about FOIA at EPA, please visit <https://www.epa.gov/foia>. I hope this information is helpful.

Secondly, I wanted to thank you for the information you shared with us to inform us that the "Alabama Department of Environmental Management has revoked the modification of Solid Waste Disposal Permit 35-06 to the City of Dothan." You also state that this renews and reiterates your request to dismiss Complaint No. 13R-16-R4. We are currently reviewing the information (and document) you shared and hope to make a determination in light of this information in the near future.

Finally, we would like to follow up on your earlier request to meet to discuss your responses to OCR's Request for Information. We would appreciate it if you could provide some possible dates in the next 2-3 weeks so that we can plan a conversation.

We truly appreciate your cooperation and we look forward to speaking with you soon. Thanks!

Lilian

Lilian S. Dorka
Deputy Director, Interim Director
Office of Civil Rights

From: Sibley, Shawn S [<mailto:ssibley@adem.alabama.gov>]
Sent: Friday, June 10, 2016 5:32 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Johnston, Tom <TLJ@adem.alabama.gov>; Golightly-Howell, Velveta <Golightly-Howell.Velveta@epa.gov>
Subject: RE: Records Request

Ms. Dorka,

The public document requester mentioned below has followed up with us again about providing copies of communications between EPA and ADEM regarding your Office's investigations. We ask again, what EPA-OCR would do if served with a similar request? Your input is very valuable to us because of the ongoing nature of EPA-OCR's investigation. Please respond to this message so that we may make an informed response to the request.

Thank you, - Shawn

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From: Sibley, Shawn S
Sent: Wednesday, May 11, 2016 4:02 PM
To: Dorka, Lilian <Dorka.Lilian@epa.gov>
Cc: Johnston Tom (TLJ@adem.state.al.us) <TLJ@adem.state.al.us>
Subject: Records Request

Ms. Dorka,

This will follow our call to your office this afternoon; sorry we were unable to speak with you. We wanted to share with you a "heads-up" regarding a public document request we have received requesting a copy of ADEM's response to your Office's March 30, 2016, information request. We are evaluating the request under our state laws, but wanted to inquire whether – if served with a similar request - would OCR release matters under investigation piecemeal or would you await the conclusion of the investigation before releasing any associated documents.

I will be taking leave starting tomorrow through next week. Should you wish to discuss this in the interim, please feel free to call Tom Johnston, ADEM General Counsel, at 334-271-7855.

Best Regards, - Shawn

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